

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PATRICK ENGLERT, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 4:11CV1560 RWS
)	
ALIBABA.COM HONG KONG)	
LTD., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

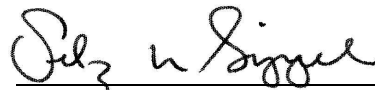
This matter is before me on defendant Alibaba Hong Kong's motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Plaintiffs purchased unidentified products from unidentified third-party suppliers that advertised on defendant's website. Plaintiff claims the products were counterfeit and seized by U.S. Customs officials. Plaintiffs bring claims for fraud, negligent misrepresentation, breach of contract, and violation of the Missouri Merchandising Practices Act. Plaintiffs concede they cannot state a claim under the MMPA, but contend they should at least be allowed to amend their complaint if the Court finds it does not state claims against defendants.

Having reviewed the pleadings, the Court will grant plaintiffs' request for leave to amend their complaint as it is clear that they have not pled fraud with the particularity required of Federal Rule of Civil Procedure 9(b). This rule is particularly important in this case, where defendants did not sell any products directly to plaintiffs and have no record of the merchants that sold plaintiffs the allegedly counterfeit products or the products themselves. I find defendants' arguments as to the remaining claims persuasive as well, and I do not know if

amendment will cure the pleading deficiencies found in plaintiffs' complaint but I will give them an opportunity to try. I will grant plaintiffs twenty days to amend their complaint, and then defendant will have the opportunity to move for dismissal of the amended complaint. **I intend to rule on the pending motion to dismiss for lack of subject matter jurisdiction in the interim, however, so if plaintiff intends to make new jurisdictional allegations that affect the outcome of the pending motion to dismiss for lack of jurisdiction then they must advise the Court by written memorandum no later than noon on January 10, 2012. Otherwise, the Court will proceed to rule on the motion to dismiss for lack of subject matter jurisdiction as submitted.**

Accordingly,

IT IS HEREBY ORDERED that plaintiffs are granted leave to file an amended complaint within twenty (20) days of the date of this Order, and defendant's motion to dismiss [#20] is denied without prejudice to being refiled once the amended complaint has been filed.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 9th day of January, 2012.